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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,361	07/09/2003	Daniel L. Krissell	5577-257	1364

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EXAMINER	
KADIR, MD MANJURUL	

ART UNIT	PAPER NUMBER
2191	

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/616,361	KRISSELL, DANIEL L.	
	Examiner	Art Unit	
	Md Kadir	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 July 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *7/9/2003*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,5,8-13,16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No: 6,088,732 to Smith et al (hereinafter Smith).

With respect to claims 1 and 16, Smith discloses a method for controlling the periodic data transfer (Col 11, lines 34-44) (Since resource is monitored continuously or periodically, and the information is transferred based on comparison (Col 2, lines 19-21), hence, controlling data transfer periodically meets the claim limitation) between a first computer processor and a second computer processor (Col 1, lines 6-8), wherein the first computer processor and the second computer processor comprise a network system (Fig 3), the method comprising: transferring data between the first and second computer processor (Col 1, lines 65-67) based on an impact of the transfer on a dynamically determined measure of performance (monitoring a real time availability of a system resource (Col 1, lines 65-67), and transferring data between the first and second

computer processor (Col 2, lines 19-21) based on a comparison of the availability of a system resources to a predetermined threshold (Col 16, lines 8-13).

With respect to claim 2 and 17 Smith discloses a method wherein transferring data between the first and second computer processor (Col 1, lines 65-67) based on an impact of the transfer on a measure of performance comprises: monitoring a real time availability of a system resource (Col 1, lines 65-67); and transferring data between the first and second computer processor based on a comparison of the availability of a system resource to a predetermined threshold (Col 16, lines 8-13).

With respect to claim 5, Smith discloses a method further comprising sending a resource availability request from the first computer processor to the second computer processor to determine resource availability (Col 5, lines 47-60).

With respect to claim 8, Smith discloses a method wherein the system resource is usage of the first and/or second computer processor (Col 9, lines 29-32).

With respect to claim 9, Smith discloses a method wherein the system resource is memory usage of the first and/or second computer processor (Col 6, lines 13-17, lines 63-67; Col 7, lines 1-3).

With respect to claim 10, Smith discloses a method wherein the system resource is central processor unit (CPU) usage of the first and/or second computer processor (Col 6, lines 63-67; Col 7, lines 1-3 (CPU is inherently present in personal computers)).

With respect to claim 11, Smith discloses a method wherein the system resource is an available bandwidth (communication link) on a network connection (Col 2, lines 63-66; Col 6, lines 39-43).

With respect to claim 12, Smith discloses a computer program product for controlling data transfer between a first computer processor and a second computer processor, wherein the first computer processor and the second computer processor comprise a network system, comprising: a computer readable medium having computer readable program code embodied therein (Abstract; Col 7, lines 3-12) the computer readable program code comprising: computer readable program code which transfers data between the first and second computer processor based on an impact of the transfer on a dynamically determined measure of performance (Abstract; Col 7, lines 3-12) (Each terminal 20-24 has a resource agent 25a-25d, which comprises an application (computer program/software) to interface with configuration engine 26a-26c) to control the data transfer).

With respect to claim 13, Smith discloses all the features of claim 12 from which it depends (See rejection for claim 12). Smith discloses a computer program product of

wherein the computer readable program code which transfers data between the first and second computer processor based on an impact of the transfer on a measure of performance comprises (Abstract; Col 7, lines 3-12) (Each terminal 20-24 has a resource agent 25a-25d, which comprises an application (computer program/software) to interface with configuration engine 26a-26c to control the data transfer): computer readable program code which monitors a real time availability of a system resource (Col 16, lines 50-57); and computer readable program code which transfers data between the first and second computer processor based on a comparison of the availability of a system resource to a predetermined threshold (Abstract; Col 7, lines 3-12) (Each terminal 20-24 has a resource agent 25a-25d, which comprises an application (computer program/software) to interface with configuration engine 26a-26c to control the data transfer); Col 16, lines 8-13) .

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 3,4,14,15,18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of U.S. Patent No: 6,014,707 to Miller et al (hereinafter Miller).

With respect to claim 3 and 18, Smith discloses all the limitation of claim 2 from which it depends (See rejection for claim 2). Smith discloses a method comprising transferring data between the first and second computer processor (Abstract).

Smith does not disclose transferring data if a predefined maximum time between transferring data has elapsed irrespective of the availability of the system resource.

Miller teaches that data will be transferred if a predefined maximum time between transferring data has elapsed irrespective of the availability of the system resource (Col 8, lines 10-18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Smith in view of Miller to add the feature of transferring data if a predefined maximum time between transferring data has elapsed irrespective of the availability of the system resource.

The suggestion/motivation for doing so would have been to improve network performance by minimizing resource utilization (Col 4, lines 9-10) (resources does not have to wait for the data to be processed when it is available, hence minimizing resource utilization).

With respect to claim 4 and 19, Smith discloses all the limitation of claim 1 from which it depends (See rejection for claim 1).

Smith does not disclose the method further comprising delaying the transfer of data until at least a predefined minimum time has elapsed after a prior data transfer.

Miller teaches the method further comprising delaying the transfer of data until at least a predefined minimum time has elapsed after a prior data transfer (Abstract, lines 10-12).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Smith in view of Miller to add the feature of delaying the transfer of data until at least a predefined minimum time has elapsed after a prior data transfer.

The suggestion/motivation for doing so would have been to minimize resource utilization by having a connectionless (unacknowledged) data transfer (Col 4, lines 9-10).

With respect to claim 14, Smith discloses all the features of claim 12 from which it depends (See rejection for claim 12). Smith discloses a computer program product further comprising computer readable program code which transfers data between the first and second computer processor (Abstract; Col 7, lines 3-12) (Each terminal 20-24 has a resource agent 25a-25d, which comprises an application (computer program/software) to interface with configuration engine 26a-26c to control the data transfer)

Smith does not disclose transferring data if a predefined maximum time between transferring data has elapsed irrespective of the availability of the system resource.

Miller teaches that data will be transferred if a predefined maximum time between transferring data has elapsed irrespective of the availability of the system

resource (Col 8, lines 10-18).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Smith in view of Miller to add the feature of transferring data if a predefined maximum time between transferring data has elapsed irrespective of the availability of the system resource.

The suggestion/motivation for doing so would have been to improve network performance by minimizing resource utilization (Col 4, lines 9-10) (resources does not have to wait for the data to be processed when it is available, hence minimizing resource utilization).

With respect to claim 15, Smith discloses all the features of claim 12 from which it depends (See rejection for claim 12).

Smith does not disclose the method further comprising delaying the transfer of data until at least a predefined minimum time has elapsed after a prior data transfer.

Miller teaches the method further comprising delaying the transfer of data until at least a predefined minimum time has elapsed after a prior data transfer (Abstract, lines 10-12).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Smith in view of Miller to add the feature of delaying the transfer of data until at least a predefined minimum time has elapsed after a prior data transfer.

The suggestion/motivation for doing so would have been to minimize resource utilization by having a connectionless (unacknowledged) data transfer (Col 4, lines 9-10).

5. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Miller further in view of U.S. Patent No: 6,625,623 to Midgley et al (hereinafter "Midgley").

With respect to claim 6, Smith discloses all the limitation of claim 1 from which it depends (See rejection for claim 1). Smith discloses transferring data between the first and second computer processor (Smith: Abstract).

Smith as modified by Miller does not disclose replicating data.

Midgley teaches data replicating (Abstract, lines 1-7).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Smith in view of Miller to add the feature of replicating data.

The suggestion/motivation for doing so would have been to save and retrieve data in case the data was lost (Col 2, lines 1-2).

With respect to claim 7, Smith discloses all the limitation of claim 1 from which it depends (See rejection for claim 1). Smith discloses transferring data between the first and second computer processor (Smith: Abstract).

Smith as modified by Miller does not disclose backing up data.

Midgley teaches backing up data (Abstract, lines 1-7).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Smith in view of Miller to add the feature of backing up data.

The suggestion/motivation for doing so would have been to save and retrieve data in case the data was lost (Col 2, lines 1-2).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Md Kadir whose telephone number is 571-270-1133. The examiner can normally be reached on Monday through Friday, from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Jules can be reached on 571-270-1074. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MDK/

Frantz Jules
Supervisory
Patent Examiner